

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

DOCKET FILE COPY ORIGINAL

1998 Biennial Regulatory Review --  
Review of the Commission's Broadcast  
Ownership Rules and Other Rules  
Adopted Pursuant to Section 202  
of the Telecommunications Act of 1996

MM Docket No. 98-35

To: The Commission

RECEIVED

JUL 21 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**JOINT COMMENTS OF  
FOX TELEVISION STATIONS, INC. AND  
USA BROADCASTING, INC.**

William S. Reyner, Jr.  
Mace J. Rosenstein

HOGAN & HARTSON L.L.P.  
555-13th Street, NW  
Washington, D.C. 20004  
202/637-5600

July 21, 1998

No. of Copies rec'd  
List ABCDE

024

## SUMMARY

Fox Television Stations, Inc. and USA Broadcasting, Inc. urge the Commission to repeal the 35 percent national audience reach cap applicable to television station ownership. As the Commission previously has recognized, the cap prevents television station group owners such as Fox and USA from expanding their businesses in a rational manner, while denying viewers the demonstrable benefits that can result from expanded group ownership at the national level.

The national reach cap survives as a vestige of a regulatory scheme that the Commission acknowledged fourteen years ago was arbitrary and irrational and could no longer be justified. In a video marketplace that continues to be characterized by an expanding proliferation of outlets and choices, arbitrary restrictions on broadcast television station ownership at the national level can not reasonably be said to advance any public interest objective. Quite to the contrary, the Commission has acknowledged repeatedly since 1984 that the economies of scale and other efficiencies realized through expanded group ownership at the national level produce tangible public interest benefits in the form of more and higher quality news, information and entertainment programming in local television markets -- the only area where diversity can be meaningfully measured.

Fox and USA exemplify this principle. The economics of group ownership have enabled Fox to provide a uniquely local brand of high quality news programming at each of its stations. USA's "CityVision" concept, launched last month, will bring a wide range of unique, locally developed and produced news,

information, children's and entertainment programming to viewers in each of its markets. The costs associated with Fox's extensive news programming and USA's localized format would be prohibitive but for the economies that can be realized through group ownership.

In the event the national cap is retained in its current or some modified form, it is imperative that the 50-percent UHF discount be preserved in order to compensate for the continuing coverage disparities between UHF and VHF stations. This is so notwithstanding the anticipated conversion to digital television broadcasting, which will not eliminate, but will likely only perpetuate, the UHF-VHF disparity. Certainly, the Commission should not undertake any adjustment of the UHF discount until it has acquired some real-world experience with digital transmission.

The Commission has recognized repeatedly over the last fourteen years that limitations on national station ownership are arbitrary and unnecessary. The continuing rapid evolution of the video marketplace only confirms the wisdom of the Commission's conclusion in 1984, and mandates that the Commission now complete its unfinished business by eliminating the audience reach cap.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	i
TABLE OF CONTENTS .....	iii
<b>JOINT COMMENTS OF FOX TELEVISION STATIONS, INC. AND USA BROADCASTING, INC.</b> .....	<b>1</b>
I. INTRODUCTION .....	1
II. LIMITING TELEVISION STATION OWNERSHIP ON THE BASIS OF AGGREGATE NATIONAL AUDIENCE REACH IMPEDES DIVERSITY AND DISSERVES THE PUBLIC INTEREST. ....	4
A. THE 35 PERCENT AUDIENCE REACH LIMITATION, LIKE ITS PREDECESSOR RESTRICTIONS ON NATIONAL OWNERSHIP, IS ARBITRARY AND UNJUSTIFIABLE. ....	4
B. THE COMMISSION REPEATEDLY HAS ACKNOWLEDGED THAT THE AUDIENCE REACH CAP IS A SOLUTION IN SEARCH OF A PROBLEM. ....	7
C. ELIMINATING RESTRICTIONS ON NATIONAL TELEVISION STATION OWNERSHIP WOULD ENHANCE VIEWPOINT DIVERSITY, WHICH IS MEANINGFULLY MEASURED ONLY AT THE LOCAL LEVEL. ....	9
III. THE PUBLIC INTEREST BENEFITS OF GROUP STATION OWNERSHIP ARE DEMONSTRATED BY THE CONTRIBUTIONS OF FOX AND USA TO THEIR LOCAL COMMUNITIES. ....	15
IV. THE UHF DISCOUNT SHOULD BE RETAINED TO COMPENSATE FOR THE HISTORICAL AND CONTINUING TECHNICAL AND COMPETITIVE DISPARITIES BETWEEN UHF AND VHF STATIONS. ....	19
V. CONCLUSION .....	22

ATTACHMENT A: STRATEGIC POLICY RESEARCH, INC.:  
"THE EMPEROR'S NEW CLOTHES: REGULATION WITHOUT  
A RATIONALE

ATTACHMENT B: ENGINEERING STATEMENT OF JULES  
COHEN: "COMPARISON OF VHF AND UHF TELEVISION  
SERVICE"

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	MM Docket No. 98-35
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202	)	
of the Telecommunications Act of 1996	)	

To: The Commission

**JOINT COMMENTS OF  
FOX TELEVISION STATIONS, INC. AND  
USA BROADCASTING, INC.**

Fox Television Stations, Inc. ("Fox") and USA Broadcasting, Inc. ("USA," and, collectively with Fox, the "Joint Commenters") hereby respond to the Commission's Notice of Inquiry, FCC 98-37 (released March 13, 1998) (the "Notice"), in the above-captioned proceeding.

**I. INTRODUCTION**

These Joint Comments are limited in scope to two related matters subject to the Congressional directive contained in Section 202(h) of the Telecommunications Act of 1996 (the "Telecom Act") 1/ and the resultant

---

1/ Section 202(h) instructed the Commission to

review its rules adopted pursuant to this section and all of its ownership rules biennially . . . and [to] determine whether any of such rules are necessary in the public interest as the result of competition. The Commission

Commission inquiry: the national television ownership rule, 47 C.F.R. § 73.3555(e)(1) (limiting common ownership of television stations at the national level to stations with an aggregate audience reach of no more than 35 percent of U.S. television households), and the related UHF television discount, 47 C.F.R. § 73.3555(e)(2)(i) (attributing UHF stations with 50 percent of the television households in their ADI market for purposes of applying the 35 percent national reach limitation). Specifically, the Joint Commenters urge the following:

1. The 35 percent national reach limitation should be eliminated.
2. The 50 percent UHF reach discount should be retained if the Commission retains the current or a modified national audience reach limitation.

The Joint Commenters' interest in these matters is neither casual nor academic. Each of Fox and USA is a multiple-station group owner whose station holdings currently implicate both the 35-percent cap and the UHF discount, as follows: 2/

Owner	Number of Stations	Aggregate Reach	Discounted Reach
Fox	22	40.446%	34.9335%
USA	13	30.907%	15.4534%

---

shall repeal or modify any regulation it determines to be no longer in the public interest.

2/ Source: Nielsen Media Research (January 1998). Figures include pending transactions.

As a direct result of these rules, the ability of each of Fox and USA to continue to grow its business in a rational manner -- and thereby to expand the quality and nature of the service each provides to the communities in which it operates -- is unreasonably and arbitrarily constrained, without any corresponding public interest benefit.

As will be shown below and in the attached economic analysis, 3/ there no longer is any basis, if there ever was one, to constrain television station ownership at the national level by limiting aggregate audience reach at 35 percent or any other level. The history of the audience reach limitation reveals that it was, and is, no more -- and no less -- than a highly arbitrary "fix" for a problem that never existed. Indeed, the Commission repeatedly has acknowledged that permitting expanded group ownership at the national level does not impair core diversity values. To the contrary, it can -- and does, in the case of each of Fox and USA -- facilitate the delivery of higher-quality video programming at the local level, the only basis on which diversity can be meaningfully measured.

Meanwhile, as illustrated in the attached engineering analysis, 4/ the numerous economic and technical grounds that the Commission previously has acknowledged result in competitive disparities between UHF and VHF stations continue to disadvantage UHF stations vis-à-vis their VHF competitors. These

---

3/ Strategic Policy Research Incorporated, "The Emperor's New Clothes: Regulation Without a Rationale" ("SPRI Paper") (Attachment A hereto).

4/ Engineering Statement of Jules Cohen, Comparison of VHF and UHF Television Service ("Cohen Statement") (Attachment B hereto).

differences, which will continue following the conversion to digital broadcasting, mandate retention of the current 50-percent discount in the number of households attributed to UHF stations if the reach cap is retained in its current or some modified form.

In the discussion that follows and in the attached analyses, we first highlight the Commission's repeated recognition that the audience reach cap is arbitrary and unjustifiable. We then present evidence of precisely the public interest benefits of large group ownership that the Commission has recognized would result from elimination of the national ownership restriction.

## **II. LIMITING TELEVISION STATION OWNERSHIP ON THE BASIS OF AGGREGATE NATIONAL AUDIENCE REACH IMPEDES DIVERSITY AND DISSERVES THE PUBLIC INTEREST.**

### **A. The 35 Percent Audience Reach Limitation, Like its Predecessor Restrictions on National Ownership, Is Arbitrary and Unjustifiable.**

In a rulemaking proceeding concluded nearly fifteen years ago, the Commission recognized that, in a dynamic, diverse and competitive video marketplace, arbitrary restrictions on television station ownership at the national level are unnecessary, irrational and, ultimately, unjustifiable. See Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Report and Order, 100 F.C.C.2d 17 (1984) ("12 Station Order"), recon. granted in part, 100 F.C.C.2d 74 (1985) ("12 Station Reconsideration Order"). In the intervening period, during which the Commission has yet to arrive at a resolution of the national ownership issue, the market has

been characterized by a continuing proliferation of alternative sources of video programming and alternative delivery modalities. The record developed in several proceedings over the last decade and a half demonstrates beyond question that competition would remain vigorous and diversity actually would be *enhanced* following elimination of the remaining national ownership limitation.

Indeed, the Commission concluded *in 1984* that "changes in the broadcasting and communications markets, new evidence of the effects of group ownership on the quality and quantity of public affairs and other programming responsive to community needs, and the lack of relevance of a national ownership rule to the availability of diverse and independently owned radio and TV voices to individual consumers in their respective local markets" render national ownership restrictions "unnecessary to achieve" diversity of viewpoints. 12 Station Order, 100 F.C.C.2d at 19. To the contrary, the Commission observed, such limitations "may be an obstacle to the broadcast of the types of programming that might more adequately address the interests and concerns of the public." *Id.*

Just as clearly, nothing in the voluminous record compiled over the years provides a satisfactory explanation for the imposition of an audience reach cap at any particular level. An expert analysis undertaken more than forty years ago specifically with a view toward formulating an appropriate level of national multiple ownership concluded that, beyond a "one [station]-to-a-customer" national ownership standard, "*there is no number which can be fully justified on logical or other grounds.*" Network Broadcasting, Report of the Network Study Staff to the

Network Study Committee (1957) at 596 (the "Barrow Report") (emphasis added). Thereafter, the adoption of the 25 percent cap in 1985 was accompanied by the Commission's understated acknowledgement "that the selection of any particular reach number necessarily involves some measure of administrative subjectivity." 12 Station Reconsideration Order, 100 F.C.C.2d at ¶ 40. The most the Commission was able to offer by way of justification was that "the 25 percent cap offer[s] administrative simplicity" and "represents a more cautious approach when compared with other proposals found in the record." Id. Indeed, far from purporting to identify a harm to be alleviated by the cap, the Commission conceded that "there is no evidence in the record that would lead us to believe that [a substantial increase in audience base] would necessarily have an adverse result . . . ." 12 Station Reconsideration Order, 100 F.C.C.2d at ¶ 36. 5/

The Telecom Act's subsequent directive to raise the audience reach cap to 35 percent, although a step in the right direction, still did not go far enough. 6/

---

5/ To the extent an audience reach cap previously had been proposed as an "equalizer" of the perceived disparity, under a numerical station cap, between ownership of stations in large markets with ownership of stations in small markets, the Network Inquiry Special Staff presciently had observed in 1980 that "it is not feasible to achieve full equality on the basis of population coverage of the stations owned. The economic value of a station is determined by numerous factors, such as affiliation, time rates, 'must buy' status, set saturation, talent, and program availability." Network Inquiry Special Staff, Final Report, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (1980), Part IV, "FCC Ownership Policy," at [585].

6/ Section 202(c)(1) of the Telecom Act directed the Commission to "modify its rules for multiple ownership" by eliminating the 12-station national ownership limit and "by increasing the national audience reach limitation for television stations to 35 percent." The House version of the bill, H.R. 1555, provided for a staged increase in the audience reach cap to 50 percent over a two-year period.

The reports accompanying the measure do not offer any rationale for the retention of an audience reach limitation, or any findings that could explain why Congress legislated as it did. <sup>7/</sup>

**B. The Commission Repeatedly Has Acknowledged that the Audience Reach Cap Is a Solution in Search of a Problem.**

Ironically, in the very order adopting the 25 percent audience reach limitation, the Commission affirmed its previous conclusion that, "as a policy matter, the *total elimination of a presumptive national ownership rule* would benefit the public interest." 12 Station Reconsideration Order, 100 F.C.C.2d 74 at ¶ 50 (emphasis added). Seven years later, the Commission again requested comment on whether to eliminate or further modify the rule. Review of the Commission's Regulations Governing Television Broadcasting, Notice of Proposed Rulemaking, FCC 92-209 (June 12, 1992). The Commission noted the public interest benefits derived from the economies of scale that could be realized through group station ownership at the national level and observed,

we believe that the primary concern underlying the national ownership rule -- preventing economic concentration and consequent harm to diversity -- may have abated with the proliferation of television stations and alternative sources of video programming . . . . We are concerned that we not perpetuate unnecessary regulations that impede the competitive ability of these

---

<sup>7/</sup> The Report accompanying H.R. 1555, the House version of the legislation that became the Telecom Act, expressed the view that, "[i]n a competitive environment, arbitrary limitations on broadcast ownership . . . are no longer necessary." H.R. Rep. No. 104-204, pt 1, at 54 (1995) (the "House Report"). Ironically, the Telecom Act then perpetuated precisely such a restriction in the 35 percent reach cap.

stations or preclude them from taking advantage of certain economic efficiencies.

Id. at ¶ 11. Accordingly, the Commission proposed raising (but not eliminating) the cap to permit a group owner to reach 35 percent instead of 25 percent of the national audience. Id. at ¶ 12.

But two and one-half years later, the issue of the national cap had not been resolved. In its Review of the Commission's Rules Governing Television Broadcasting, Further Notice of Proposed Rule Making, FCC 94-322 (January 17, 1995) at ¶ 81 ("TV Further Notice"), the Commission recognized that "for many of the existing national TV group owners, the 25% national audience reach limit is the more binding regulatory constraint on group acquisition of additional stations nationally." But, again, rather than eliminate the cap altogether, the Commission instead proposed to relax the cap by 5 percent every three years until the national cap rose to 50 percent, "the final limit." Id. at ¶ 101. During this transition period, the Commission proposed to monitor the relevant markets and determine whether or not problems had arisen which would justify a halt in the relaxation of the national cap.

Yet, notwithstanding multiple rulemaking proceedings -- and notwithstanding the Commission's recognition more than three years ago in the TV Further Notice that a national reach cap of 25, or 35, or even 45 percent was too low -- *it took Congressional action -- passage of the Telecom Act and its directive to increase the cap to 35 percent -- to bring about even the first incremental step toward*

*fulfillment of the Commission's 1984 conclusion that all national ownership limitations could be eliminated without adverse effects on the public interest.*

Now, fourteen years after concluding that all national ownership limits could safely be eliminated and without even referring to that conclusion or the record supporting it, the Commission has asked for comment on "whether [the audience reach cap] is no longer necessary in the public interest as the result of competition." Notice at ¶ 15.

**C. Eliminating Restrictions on National Television Station Ownership Would Enhance Viewpoint Diversity, Which is Meaningfully Measured Only at the Local Level.**

The Commission also has repeatedly acknowledged that diversity concerns are not a valid justification for restrictions on station ownership at the national level. Gross empirical data undermining the diversity rationale have been available to the Commission for years.

- The overall number of television stations increased by more than 50 percent between 1975 and 1990, with independent stations increasing more than four-fold. See Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996, 4011 (1991) ("OPP Paper").
- During that period, the number of over-the-air broadcast television stations available to the median household increased from six to ten stations. Id.
- Between approximately 1985 and 1995, the number of broadcast television stations increased by 30 percent, and three new national broadcast networks emerged. House Report at 54-55.
- Even as recently as the year between August 1996 and July 1997, eleven new television stations were

activated. Fourth Annual Report, Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 13 FCC Rcd 1034, 1090 (1998) ("Video Competition Report").

Of course, these sweeping changes in the broadcast television marketplace do not even begin to account for the ongoing expansion of cable system channel capacity and the corresponding proliferation of cable program services, the dramatic arrival and continued growth of DBS as a competitive video program delivery system, the emergence of PC technology, the entry of telephone companies into the video distribution market, and the advent of digital video delivery. For example,

- Cable system channel capacity grew, on average, by nearly 13 percent between 1995 and 1996. As a result, "[o]ver the past decade, non-premium cable viewership has grown significantly, while viewership of broadcast television stations has steadily declined." Video Competition Report, 13 FCC Rcd at 1050-51.
- Over the period from 1987 to 1997, basic cable's average audience share increased from 11.5 to 36.25, mirroring a decline in broadcast station average share from 87.7 to 66.5. Id.
- During the 1997-98 television season, the four major broadcast networks accounted for a combined 58 percent audience share of prime time viewing, down from 71 percent just four years before. Bauder, D., "Cable Ratings Top Networks," The Washington Post, July 8, 1998 at D7.
- Indeed, less than month ago, the four major networks were overtaken by basic cable in every available Nielsen Media Research category -- total viewers, ratings and audience share -- overall and in prime time. Cable's household delivery represented a 19.5 percent increase over the same week of 1997. Higgins, J.M., "Basic cable booming," Broadcasting &

Cable, July 6, 1998 at 41 (summarizing Nielsen data for week of June 22-28, 1998).

- DBS subscribership increased approximately 43 percent between July 1996 and June 1997. Video Competition Report, 13 FCC Rcd at 1070.
- Estimates of DBS penetration by 2002 range from 14.6 to 15 million subscribers, or approximately 14.5 percent of total television households. Id. at 1071.

Taken individually or as a whole, these exponential increases in the number of video program choices available to consumers -- many of which were barely imaginable in 1984, when the Commission concluded that technological and other developments already had completely undermined the basis for national ownership limitations -- fully justify the elimination of the national cap.

These structural changes in the video marketplace are paralleled by the Commission's evolving recognition that, as a matter of communications policy, there is no legitimate nexus between viewpoint diversity and multiple ownership at the national level. This is so, the Commission concluded fourteen years ago, because "[t]he area from which consumers can select the relevant mass media alternatives is generally the local community in which they work and live. Radio and TV signals are available over the air in generally discrete local markets."

12 Station Order, 100 F.C.C.2d at 27. Accordingly, the Commission reasoned,

it would appear eminently reasonable to consider viewpoint diversity to be primarily a matter pertaining to local diversity, in that viewers in San Francisco, St. Louis and Philadelphia each judge viewpoint diversity by the extent of sources of ideas available to them, not by whether those same or other ideas are available in other broadcast markets.

Id.

Thereafter, the Commission's recognition of this fundamental premise has been repeated and unequivocal:

- Within the United States, the most important idea markets are local. For an individual member of the audience, the richness of ideas to which he is exposed turns on how many diverse views are available within his local broadcast market. For that individual, whether or not some of those views are also disseminated in other local broadcast markets does not affect the diversity to which he is exposed. Accordingly, national broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public. [12 Station Order, 100 F.C.C.2d at 37.]
- Evidence in this proceeding suggests that group owners do not impose a monolithic editorial viewpoint on their stations, but instead permit and encourage independent expression by the stations in response to local community concerns and conditions. Thus, it appears that Commission policy founded on the purported dangers of group ownership in terms of a restraint on the diversity of ideas available to the country may have been based on a false assumption. [Id. at 20.]
- The evidence presented by the networks, which was not controverted, shows that their group-owned stations take editorial positions and make basic reporting and coverage decisions on an autonomous basis . . . . The fact that such diversity of viewpoint in local news reporting and in editorializing on local issues exists alongside a group or network ownership structure means that it is indeed possible to have greater viewpoint diversity than there is ownership diversity. [Id. at 34.]

- [N]ational ownership diversity is not of primary relevance in promoting viewpoint diversity. [12 Station Reconsideration Order, 100 F.C.C.2d at ¶ 18.]
- National ownership restrictions bear no necessary relation to the number of antagonistic information outlets available in any particular local market. [*Id.* at n.22.]

Precisely because station ownership at the national level does not -- and, given the Commission's local ownership rules, can not -- reduce the number of independently owned television stations in a given local community, permitting expanded group ownership at the national level similarly will not, and can not, affect the number of viewpoints available in a given local market -- the only relevant market for purposes of diversity analysis.

More recently, in its ongoing proceeding regarding issues related to broadcast television station ownership (but before Congress had directed the relaxation of the audience reach cap), the Commission emphasized, again, that "the video program delivery market is a local market." Review of the Commission's Rules Governing Television Broadcasting, Further Notice of Proposed Rule Making, FCC 94-322 (January 17, 1995) at ¶ 83. Consequently, the Commission acknowledged, "[r]elaxing the national ownership limits will not by itself increase or decrease the number of separately owned broadcast TV stations in the video program delivery market." *Id.* The Commission pointed by analogy to the network system, in which a great number of stations are affiliated with a single network, and therefore, even though not commonly owned, present identical programming for

a large portion of each broadcast day irrespective of the national ownership limits, and without adversely affecting diversity. Id. at ¶ 96. Cf. id. at ¶¶ 87-88 (Commission does not expect relaxation of the national ownership limits “to have a deleterious effect on the different local advertising markets”).

Meanwhile, the Commission’s recognition of the disconnect between multiple ownership and local diversity has been echoed and underscored by the court’s opinion in Lutheran Church-Missouri Synod v. FCC, No. 97-1116 (D.C. Cir. 1998), which concluded that the diversity formulation “seems too abstract to be meaningful.” Id. at 20. Indeed, because, as the court found, by “diversity” “the Commission is not referring to format diversity -- *i.e.*, the FCC’s interest in ensuring that not every station on the spectrum is devoted to news radio” (id. at 19 n.13), it could be argued that limitations on ownership at the national level are completely irrelevant to the functioning of the local market.

At the same time, the continued imposition of a national ownership cap results in a perhaps irreconcilable tension with the First Amendment speech rights of television station group owners. For example, because the aggregate reach of the Fox stations currently is in excess of 34.9 percent, Fox is effectively prohibited from speaking in the manner it wishes in any market where it does not currently own a television station. Given the Commission’s prior recognition of the corresponding lack of any demonstrable harm resulting from elimination of the cap, its perpetuation runs afoul of the First Amendment. As the Supreme Court has more than once emphasized,

When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434, 1455 (D.C. Cir. 1985). It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.

Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 664 (1994). Under the circumstances described above, the Joint Commenters respectfully submit, no such demonstration can be made with respect to the national reach cap.

### **III. THE PUBLIC INTEREST BENEFITS OF GROUP STATION OWNERSHIP ARE DEMONSTRATED BY THE CONTRIBUTIONS OF FOX AND USA TO THEIR LOCAL COMMUNITIES.**

Just as the historical record is clear that the national reach cap is arbitrary and unnecessary, the record is equally clear that expanded group ownership at the national level advances the public interest rather than harms it. Indeed, as the Commission previously has noted, group ownership increases viewpoint diversity with respect to news and public affairs programming precisely because group owners have lower costs and face lesser risks in providing such programming.

Thus, as early as 1984, the Commission found that "group owners broadcast more issue-oriented programming than non-group-owned stations," and concluded that "group ownership actually furthers, rather than frustrates, the foremost First Amendment goal of augmenting popular discussion of important public issues." 12 Station Order, 100 F.C.C.2d at 20. The Commission predicted

that “the availability of more network and group-owned stations might enhance the information and entertainment markets by increasing the amount of local news and public affairs programming.” Id. at 33. In 1992, the Commission restated its view that increased economies of scale realized through expanded national group ownership “could permit the production of new and diverse, including locally produced, programming.” Review of the Commission’s Regulations Governing Television Broadcasting, Notice of Proposed Rulemaking, FCC 92-209 (June 12, 1992), at ¶ 11. See also SPRI Paper at 8 (“[t]he ability to deliver competitive programming requires that an enterprise be able to spread the fixed costs of program production over as broad an audience as possible, while at the same time delivering competitive demographics to advertisers”).

These are precisely the public interest benefits that permitting expanded group ownership has produced, and that are exemplified by the experience of the Joint Commenters. Each of Fox and USA has been able to realize economies of scope and scale through group ownership that have translated directly into improved service to viewers in their stations’ communities.

#### **Fox: Expanding Local News and Information Programming**

Fox has made *local* news a priority of its owned-station group. Each of the Fox O&O news operations is independently managed and edited. As the Commission has observed, the imposition of a “monolithic” editorial viewpoint on commonly-owned stations makes no sense: to be successful, a broadcast news operation must be responsive to local community needs, issues and concerns.

Yet it is precisely the economics of large group ownership that enable Fox to provide a uniquely local brand of news programming:

- Fox O&Os are able to take advantage of shared technology, such as satellite news gathering trucks, that would be prohibitively expensive for smaller groups. A single truck dispatched to a remote location can feed each of the Fox-owned stations, allowing each station to localize stories of national and regional importance according to the interests and concerns of its local community.
- Fox stations, which are linked both by satellite and fiber optic cable, can share coverage of events in each of the 22 markets in which they operate, individually tailored to meet the needs of their respective markets.
- Similarly, Fox's local investigative reporting teams provide materials for stories relevant to viewers in other Fox markets.
- Fox stations are able to share research strategies, techniques and findings to work within their respective communities to regenerate and expand the audience for news programming -- again, tailored to the specific needs and interests of the local market.

These efficiencies have resulted in the continuing expansion of local news programming on all the Fox stations. All but one of the Fox stations already present both morning and evening newscasts. <sup>8/</sup> Now, several are in the process of expanding their morning news programs -- the only truly *local* alternative to national network morning programs in each of the Fox markets, dedicated to local news, traffic, weather, school information, and other matters of unique interest to

---

<sup>8/</sup> The only exception is Fox's Denver outlet, KDVR, acquired in July 1995, which expects to launch its news operation shortly.

the local community -- from 5:30 to 9:00 AM. Several Fox stations present both 5:00 and 6:00 PM newscasts *and* both prime time and late night newscasts. None of these efforts would be sustainable without the efficiencies derived from large group ownership.

### **USA: Providing Local Programming Alternatives**

Inheriting a core of weak, home-shopping formatted UHF outlets, USA has embarked on an ambitious program to convert its stations into vibrant, locally-programmed outlets attuned to the interests and concerns of the communities they serve. USA's concept -- called "CityVision" -- embodies a return to the future of television, by creating, in each of its markets, a truly local presence, with programming created locally by and for local residents, including local news, public affairs, entertainment and children's programming.

USA launched its first "CityVision" outlet, WAMI, Hollywood/Miami, Florida, last month. Among its initial program offerings are the following:

- "The Times," a news show emphasizing issues of local interest and concern.
- "Generation ñ," a locally-produced program focusing on issues uniquely of concern to the second-generation Latino community.
- "Out Loud," a talk show devoted to local political, social and cultural issues.
- "City Desk," produced in collaboration with the Miami Herald, which follows newspaper reporters as they investigate stories of local interest.
- "WAMI on Miami," which consists of live, locally-produced educational and informational children's programming.

In addition to bringing a truly local presence to the Miami television landscape, the launch of CityVision on WAMI has produced employment opportunities for more than 125 people, many of whom are being given their first opportunity to work in the television business. There simply is no comparable effort to undertake local production on this scale.

Launching a truly local television presence -- USA anticipates providing as much as 12 hours per day of locally-produced programming on each of its stations -- is highly capital intensive. The facilities and equipment necessary to launch CityVision, from studios to cameras to control rooms and editing facilities, must be duplicated as the CityVision concept is rolled out in each of the USA markets. The capital costs would be prohibitive for any of these stations as stand-alone outlets. USA's ability, as a large station group owner, to spread these costs over the entire group makes the conversion of its stations to true local outlets economically feasible.

#### **IV. THE UHF DISCOUNT SHOULD BE RETAINED TO COMPENSATE FOR THE HISTORICAL AND CONTINUING TECHNICAL AND COMPETITIVE DISPARITIES BETWEEN UHF AND VHF STATIONS.**

In the event the Commission elects to retain the national reach cap in its current or some modified form, it is clear that there continue to be significant performance disparities between UHF and VHF stations that mandate the retention of the UHF discount. Moreover, because these disparities will continue following the conversion to digital broadcasting, it would be premature to adjust the

UHF discount before the Commission and the industry have acquired meaningful experience with digital transmission.

The UHF discount was adopted in recognition of the "inherent" -- and unalterable -- "physical limitations" of the medium. 12 Station Reconsideration Order at ¶ 43. The Commission stated that

Due to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF. It should be recognized that actual equality between these two services cannot be expected because the laws of physics dictate that UHF signal strength will decrease more rapidly with distance than does VHF signal strength.

Id. (quoting Comparability for UHF Television: Final Report (September 1980), at 2. The discount recognized that "the fundamental limitation of UHF television involves its ability physically to reach viewers." Id.

The 50 percent discount was adopted because the Commission concluded that, consistent with the diversity objectives of the multiple ownership rules, "a more appropriate indicator of the reach handicap of UHF stations is one that measures the actual coverage limitation inherent in the UHF signal." Id. at ¶ 44. "The discount approach," the Commission said, "provides a measure of the actual voice handicap and is therefore consistent with our traditional diversity concerns." Id. at ¶ 44.

The record compiled subsequent to the adoption of the UHF discount has demonstrated the continuing performance disparity between UHF and VHF stations, notwithstanding improvements in receiver and antenna performance.